

accordingly set aside, no order as to costs.

Appeal dismissed;
Cross-appeal allowed.

Solicitors: *Lovelace & Hastings; R. R. Chelliah.*

VIRUTTHASALAM & ORS. v. PHANG QUEE

[O.C.J. (Abdul Aziz J.) November 5, 1964]

[K.L. — Civil Suit No. 673 of 1961]

Land laws — Mining sub-lease — Nature of — Payment of tribute — Surrender of sub-lease — Whether such payment can be recovered — "Advance payments of tribute" — Meaning of.

In this case the defendant sub-leased certain mining lands to the plaintiffs, who paid \$7,762 as advance payments of tribute. The plaintiffs subsequently surrendered the sub-lease and claimed the return of the sum paid by him, less the amount already paid by the defendant to the plaintiffs as tribute.

Held: the payment by the plaintiffs should be regarded as a loan made by them to the defendant, the loan to be repaid by deductions from any tribute upon ore which the miner may extract from the land and although in this case the tribute is no longer payable, the defendant remained liable to repay the balance of the loan.

Cases referred to:—

(1) *Gowan v. Christie* (1873) L.R. 2 S.C.App. 273.

(2) *Stockloser v. Johnson* [1954] 1 Q.B. 476.

CIVIL SUIT.

Y. C. Chin for the plaintiffs.

M. W. Maxwell for the defendant.

Cur. Adv. Vult.

Abdul Aziz J.: By a sub-lease dated 3rd January, 1961, the defendant sub-leased certain mining lands in Kerling, Selangor, to the plaintiffs. Although the opening clause in the sub-lease speaks of \$7,762 as being the consideration for the sub-lease, the operative clause 2C states:—

"The sum of \$7,762 shall be treated as advance payments of tribute and the sub-lessees shall be at liberty to deduct 25 per centum of the tribute payable by them hereunder until such time as the said sum of \$7,762 is fully repaid and thereafter the full tribute shall be paid by the sub-lessees to the sub-lessor."

The plaintiffs, having surrendered the sub-lease with the consent of the defendant, now claim for the return of \$7,500 less \$445.27 already paid by the defendant to the plaintiffs as tribute. It was contended by the plaintiffs that \$7,762 was a deposit and that since neither the mutual agreement nor the sub-lease makes any reference to the forfeiture of the deposit upon rescission of the contract, the amount paid is recoverable.

No evidence has been adduced on either side on the facts and the question here is whether

A upon a true construction of the clause 2c the \$7,762 paid by the plaintiffs was recoverable in law or in equity.

The words "advance payments of tribute" can be construed either as meaning that \$7,762 was the pre-payment of the price of the ore to be extracted from the land or as a loan made by the plaintiffs to the defendant to be repaid by deductions from the tribute payable on the land.

Lord Cairns in *Gowan v. Christie* ⁽¹⁾ said of a mining lease:

"What we call a mining lease is really, when properly considered, a sale out and out of a portion of land. It is the liberty given to a particular individual for a specific length of time to go into and under the land and to get certain things there if he can find them, and to take them away just as if he had bought so much of the soil."

A tribute can therefore be fairly described as the purchase price of the soil that the miner removes from the land. Even if the \$7,762 is regarded as the pre-payment of the purchase price of the ore, equity will always relieve against the forfeiture of the purchase price if in the circumstances of the case it would be unconscionable for the sub-lessor to retain the money, see *Stockloser v. Johnson*. ⁽²⁾ Since in the present case only a small amount of ore has been extracted from the land as manifested by the tribute already accrued, it would be unconscionable for the sub-lessor to retain the money.

Having regard to the nature of the transaction and since clause 2c itself makes reference to "repayment", the above construction is untenable. The intentions of the parties must therefore be gathered from the whole *fortius contra preferentes*. It would be more reasonable to say that the \$7,762 was a loan made by the plaintiffs to the defendant, the loan to be repaid by deductions from any tribute upon ore which the miner may extract from the land. Since tribute is no longer payable, that method of re-payment is no longer available to the defendant but the liability to repay the balance of the loan still remains.

There will accordingly be judgment for the plaintiffs for \$7,054.73 plus interest and costs.

Judgment for the plaintiffs.

Solicitors: *Skrine & Co.; P. T. Wong & Co.*

PUBLIC PROSECUTOR v. LI CHUAN PIN

[A.C.J. (Winslow J.) November 9, 1964]

[Singapore — Magistrate's Appeal No. 149 of 1964]

Fraudulent Debtors Ordinance (Cap. 116), s. 3 — Bankruptcy Ordinance (Cap. 11), s. 113 — Obtaining credit by false pretences — Meaning of "intent to defraud".

Bankruptcy — Obtaining credit by false pretences — Fraud — "Intent to defraud".